

ARGUMENT/RESPONSE

The Examiner rejected claims 1-11 under 35 U.S.C. 102(e), arguing that claims 1-11 were anticipated by the Chen et al., reference. Applicant respectfully submits that claims 1-11 are patentably distinguishable over the Chen et al., reference and respectfully submits the following in support of this assertion.

Claim 1 of the Applicant's disclosure reads as follows:

"1. An absorbent article, said article being placeable between the body of a user and undergarments worn by the user, said article comprising:

a liquid pervious top sheet having an upper surface for engaging at least a portion of the body of the user;

a liquid impervious bottom sheet for protecting the undergarments of the user;

an absorbent core provided between said top sheet and said bottom sheet; and

a supplemental member defined by a slit cut through said upper surface of said top sheet and to a preselected depth into said absorbent core, said supplemental member having a removed end capable of movement between a retracted position and a projected position wherein said supplemental member extends at least partly above said top sheet of said article." (emphasis added)

First, it is respectfully argued that Chen et al., does not disclose a supplemental member defined by a slit cut through the upper surface of said top sheet as required by Claim 1. To start, there are no apertures or slits in the top sheet 12 of the Chen et al., reference. The Examiner's statement that the "top sheet 12 contains apertures in the central region for increases fluid intake." is simply wrong.

The Chen et al., reference discloses apertures 36, crease lines 28, and spanning lines 76, but none of them are located upon the upper surface of the top sheet 12. The Examiner's attention is respectfully directed to Figure 2 of the Chen et al., reference which clearly shows that apertures 36 are located on the horizontal wicking member 24, residing below the top sheet 12. This is repeatedly confirmed by the specification.

"The horizontal wicking barrier may be provided with one or more openings or apertures 36 underneath the middle absorbent member 20 to permit liquid flow to the lower absorbent member 22 from the central absorbent section 16." (emphasis added). See Paragraph 0099, Chen et al. "[A]pertures 36 can be provided in selected portions of the barrier material to prevent oversaturation of the central absorbent section 16." (emphasis added). See Paragraph 0097, Chen et al.

With regard to crease lines 28, the Examiner's attention is respectfully directed to Figures 1, 2, 5, 6, and 10 of the Chen et al., reference which clearly illustrate that crease lines 28 are located on the lower absorbent member 22, residing below the top sheet 12. Again, this is repeatedly confirmed by the specification.

“The lower absorbent member 22...has two spaced apart crease lines 28 in the crotch region 48 which promote formation of a valley fold along in the lower absorbent member 22 when the article 10 is compressed laterally.” (emphasis added). *See* Paragraph 0110, Chen et al. “Preferably, the crease lines 28 are score-marks formed by sharply creasing the lower absorbent member 22 along a fold made prior to assembling the article. (emphasis added). *See* Paragraph 0111, Chen et al.

With regard to spanning lines 76 and, for that matter, shaping line 72 and central longitudinal line 74, the Examiner’s attention is respectfully directed to Figure 6 of the Chen et al., reference which clearly shows all of these features to be disposed on the upper absorbent member 18 and not upon the top sheet 12. Again, this is clearly disclosed by the specification. *See* paragraphs 0131 and 0132, Chen et al.

In fact, Figure 6, which is the only Figure of the Chen et al., reference illustrating the spanning lines 76 cited by the Examiner, does not even illustrate the top sheet 12. The Examiner’s attention is directed to Paragraph 0131 of the Chen et al reference which reads that the top sheet of Figure 6 is “not shown for clarity.”

In short, the “apertures” disclosed in Chen et al., as referred to by the Examiner, are not made in the top sheet 12, nor do they define a “member.” As such, the rejection of independent claim 1 is improper and should be withdrawn by the Examiner.

Second, claims 1 and 8 of Applicant's disclosure require a supplemental member having a removed end capable of movement between a retracted position and a projected position wherein the supplemental member extends at least partly above said top sheet of said article.

The Applicant respectfully directs the Examiner's attention to Figures 2, 5, 12, 13A, 13B, and 13C of the Chen et al., reference. These Figures provide side views of the invention disclosed by the Chen et al., reference and illustrate the "apertures," middle absorbent member 20, and central rising member 50, which were cited by the Examiner. These Figures illustrate that neither the middle absorbent member 20 nor the central rising member 50 cited by the examiner are capable of extending at least partly above the top sheet of the article when in an "expanded" position as required by claims 1 and 8 of Applicant's disclosure. This is apparent given that the top sheet 12 does not have any apertures for allowing the middle absorbent member 20 or the central rising member 50 to extend at least partly above the top sheet 12.

Applicant respectfully submits that the Examiner's rejection of claims 1 and 8 are improper and should be withdrawn.

Finally, with respect to the Examiner's arguments pertaining to claim 9 of Applicant's disclosure. Claim 9 reads as follows:

"9. The article of claim 8, wherein said proximate end of said supplemental member is hingedly attached to said top sheet." (emphasis added)

The Examiner rejected claim 9 according to the following rationale: “With respect to claim 9; Chen teaches that central rising member 50 has elements attaching it to a horizontal wicking barrier 24 (Fig. 5) in the form of adhesives at either or both ends of said member. (¶0134) As can also be seen in Fig. 5, wicking barrier 24 lies directly under top sheet 12, therefore rising member 50 is considered herein to also be effectively hingeably attached to top sheet 12.” (emphasis added). See Office Action, Page 3.

It is improper for the Examiner to reject a claim under 35 U.S.C. 102 unless the cited reference shows exactly what is claimed. The law is well-settled that an anticipation of a patent claim can only be found where the prior art reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780-782 (Fed. Cir. 1985). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). For a prior art reference to anticipate, every element of the claimed invention must be identically shown in a single reference, and the elements in the reference must be arranged as in the claim under review. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

Here, the Examiner admits that the central rising member of Chen et al., is not attached to the top sheet, but nevertheless attempts to amend the legal standard for a rejection under §102 by arguing that the rising member should be “considered” to be “effectively” hingeably attached to the top sheet. This creative argument does not change the fact that the Chen et al., reference fails to disclose a supplemental member hingedly attached to the top sheet. As such, the rejection of claim 9 should be withdrawn.

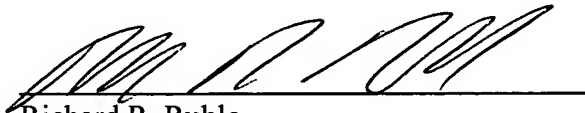
Given that independent claims 1 and 8, are allowable in light of the cited reference, Applicant respectfully submits that claims 2-7 and 9-11 are also allowable as being dependent upon an allowable base claim. In light of the above, Applicant respectfully requests that the Examiner withdraw the §102(e) rejection of claims 1-11.

REMARKS

Applicant respectfully submits that this response is a complete and thorough response to the Examiner's Office Action and respectfully requests allowance of the application.

If the Examiner feels that a telephone conference with the undersigned would be helpful to the allowance of this application, a telephone conference is respectfully requested.

Respectfully submitted,
VINSON & ELKINS L.L.P.

A handwritten signature in dark ink, appearing to read 'Richard R. Ruble', is written over a horizontal line.

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